

STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT-FINDING 2002 MAY 13 A 9:23

BETWEEN

THE SUMMIT COUNTY SHERIFF

AND

THE FRATERNAL ORDER OF POLICE
LODGE NO. 139

(DEPUTIES)

BEFORE: Robert G. Stein

SERB CASE NO(s): 01 MED 09-0776

PRINCIPAL ADVOCATE FOR THE UNION:

Hugh C. Bennett, Staff Representative
FRATERNAL ORDER OF POLICE OLC, INC.
222 E. Town Street
Columbus OH 43215

And

PRINCIPAL ADVOCATE FOR THE EMPLOYER:

Howard D. Heffelfinger, Executive V. P.
CLEMANS-NELSON
2656 South Arlington Road
Akron OH 44319-2050

INTRODUCTION

The Employer in this case is the Summit County Sheriff (hereinafter referred to as “Employer” or “Department”). The Union is the Fraternal Order of Police, Lodge 139 (hereinafter referred to as “Union” or “FOP”). The bargaining unit is comprised of approximately three hundred and twenty-six (326) employees who hold the title of full-time Deputy Sheriff. Although all bargaining unit members hold the classification of Deputy Sheriff, some work on road duty, some in the county jail, and others on differing assignments in the Department. The parties bargained over a successor Collective Bargaining Agreement (hereinafter referred to as “CBA”) during the past several months. They experience mixed success with these negotiations. The Fact-finder was utilized as a mediator during the later part of these negotiations.

In this report the term “EPS” refers to Employer’s Position Statement and the term “UPS” refers to Union’s Position Statement. The position of each party on all impasse issues shall not be restated but will be referenced by these terms.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for Fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are somewhat limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ISSUE 1 Article 7 FOP Representation

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The parties agreed to minor modifications of this language that resulted in the inclusion of the words **Bargaining Unit Chairman** after the words, FOP President, that appear in this article. The parties have also agreed in Section 7.3 to add the words **Bargaining Unit Chairman** to a provision that permits a choice of days and references shift selection. The issue in dispute is in Section 7.2. It deals with a Union proposal to expand the release time for the Union President. The Union had 4 presidents (3 ex-presidents) and one current president on their negotiating team. During the hearing the Union made a convincing argument regarding the amount of time the Union President spends in the administration of the CBA and in consulting with management on various issues.

The Employer indicated it is not opposed to a reasonable expansion of time, but does not think that the size or complexity of the bargaining unit justifies a full-time release for the Union President. It contends that in terms of comparable data available (i.e. sixteen (16) Summit County agreements) only four (4) have a more generous contract

administration time provision than that which currently exists in the CBA. In terms of external comparables, the Employer argues that only one (1) Sheriff bargaining unit has a more generous administration time provision.

As important as comparable data can be to the Fact-finding process, it is only one of the statutory criteria that must be considered. The statute also requires consideration of past collective bargaining and other factors which are normally and traditionally used in these matters. It was clear from this Neutral's perspective that the parties have much to do regarding the development of their labor-management relationship. This is to be expected with a new administration. The Union provided numerous examples of the Union President being called to the Sheriff's Human Resource Office to assist in a matter related to the bargaining unit. It is also a fact that the bargaining unit is widely distributed in the county. A Union President has some travel time involved in proper administration of the CBA.

Because of the unique nature of each bargaining relationship, comparable data from other employers and bargaining units is of limited value when assessing the need for a Union President to have contract administrative time. This Fact-finder is personally aware of bargaining units of 2500 members in which there has not been an arbitration hearing in six (6) years. However, this Fact-finder is also aware of a bargaining unit of 500 employees that averages some 500 grievances a year. The relationship, the make-up of the bargaining unit, and the bargaining history of the parties are important factors in this regard. It is also significant that the Sheriff was newly elected and is just in the early stages of establishing his style of management with the bargaining unit. It is likely the

FOP President will be spending a great deal of time with his members and the new administration as it establishes its way of running the Department.

Currently the Union President has sixteen (16) hours per month to administrate the CBA for the entire bargaining unit. The evidence demonstrates a need to expand this time; however, an expansion should be made in a prudent and measured manner. It is still useful for Union leadership to remain in touch with the work of the bargaining unit. It is noted that the parties used the word "Chairman" in agreeing upon new language in Sections 7.3 and in the proposal contained in 7.2. I find a gender-neutral term to be more appropriate in today's world of gender equality.

Recommendation

The following new language is proposed:

7.1 Current Language

7.2 The FOP President (**Bargaining Unit Chair**) or **designee** shall be scheduled to work a maximum of eight (8) shifts per month, in accordance with Section 7.3. The remaining time shall be considered administrative time that shall be utilized for purposes of contract administration and other official union business related to the bargaining unit. Administrative time shall be considered paid time for purposes of this provision.

a. At the conclusion of the term as President (Bargaining Unit Chair), the employee shall return to the shift and assignment held at the time of election to President, unless otherwise mutually agreed.

7.3 The FOP President (**Bargaining Unit Chair**) shall have the selection of the shift **and day(s) off** without regard to seniority. The choice of shift **and day(s) off** shall be for the duration of the President's (**Bargaining Unit Chair's**) term.

ISSUE 2 Article 9 Grievance Procedure

Union's position

SEE UPS.

Employer's position

SEE EPS.

Discussion

The Union is seeking one change in Section 9.8 F. The change is to require the cost and fees of the arbitrator to be shared equally. The Employer rejects this proposal, but is seeking changes in Section 9.8 C. that would require the selection of arbitrators to be from those who are in the National Academy of Arbitrators. I find the Employer's proposal in this matter to be sound. The National Academy of Arbitrators is a well-respected institution that is in partnership with FMCS and AAA and does a great deal to maintain professionalism in the field of labor and employment arbitration. It has very high standards. Those who become members are people who have been practicing in the field for several years and have been proven to be acceptable to a variety of labor and management representatives by virtue of their continued selection to serve in this capacity.

The testimony provided by the Union indicated that in a majority of the cases, the arbitrators hearing cases during the last contract period ended splitting the fees between the parties due to a number of split decisions. Throughout their bargaining history the parties have shared the cost of arbitration equally, prior to the most recent agreement. The Employer pointed out that nine (9) out of fifteen (15) deputy unit comparables

contain a loser pay provision. This demonstrates acceptance of a loser pay provision by a majority of selected jurisdictions outside of the county, but what is notably absent from the Employer's comparable data (and the Union's) is the existence or absence of this provision in the sixteen (16) labor contracts in Summit County.

The facts indicate that the Employer was able to achieve the language on loser-pay during the last round of bargaining. What is not known is what the Employer gave up to gain this language or what the Union gained. This information would have been useful in analyzing this issue. However, given the Union's level of expertise it is reasonable to assume this change was not won without sacrifice. A fact-finding report is designed to be a vehicle to achieve acceptance by both parties and often represents in the aggregate a balance of recommendations that are supported by the criteria of O.R.C. 4117. However, for a party to change existing language there must be a compelling reason and sufficient data to support the change.

The selection of an arbitrator is a decision that parties consider carefully. What the Employer is proposing is to take steps to increase the odds that the pool of qualified candidates would represent an experienced pool. The Union is seeking to re-establish a shared cost arrangement, but what is missing is supportive data to demonstrate why the current language is unworkable or is ripe for change after only one contract period.

Recommendation

The following new language is proposed:

Sections 9.1 through 9.7 current language

Section 9.8 A. and B. current language

C. Within ten (10) calendar days from the date of the request to Arbitrate, the Federal Mediation and Conciliation Service (FMCS) shall be jointly requested to submit a panel of seven (7) arbitrators. **The notice to FMCS shall specify that the arbitrators are to be members of the National Academy of Arbitrators and residents of the State of Ohio.** The parties shall alternately strike the names of the arbitrators until only one (1) name remains. Each party may once reject the list and request from FMCS another list of seven (7) names until a mutually agreeable arbitrator is selected. The parties may mutually agree to an arbitrator, but such selection shall be within the time limits of this Section C. **Furthermore, if the party elects to receive a panel of arbitrators from the American Arbitration Association (AAA) instead of FMCS, as outlined above, the requesting party will notify the other party prior to the parties requesting a panel from FMCS. The AAA panel will consist of fifteen (15) arbitrators who are members of the National Academy of Arbitrators and residents of the State of Ohio. The party requesting the panel will pay the cost of the panel. Once the AAA submits the panel of arbitrators to the parties, each party shall have ten (10) days from the mailing date in which to strike any name to which it objects, number the remaining names to indicate the order of preference, and return the list to the AAA.**

Sections 9.8 1 D. and E. Current language

Section 9.8 F. Current Language

Section 9.9 current languages.

ISSUE 3 Article 10 Discipline

Union's positions

SEE UPS.

Employer's position

SEE EPS.

Discussion

Neither party presented compelling evidence to support a change in language that has existed in the CBA for several years. Furthermore, given the recommended changes in providing more release time for the Union President (Bargaining Unit Chair) there may be less need for a change in this area. It will take time to evaluate whether the additional time for the Union President will make a difference. The next contract period should provide sufficient time to determine whether there is still a need to change existing language under Article 10. The Employer's desire to include suspensions of record in the language of Article 10 because the Supervisor Unit agreed to it is not persuasive. A supervisor unit is made of individuals who are more aware of administrative protocol and procedure. The distinction between a traditional suspension and a suspension of record is likely to be more appreciated by bargaining unit supervisors who are closer to the supervisory change of command. Neither party provided a compelling rationale backed up by evidence to justify a change in current language at this time.

Recommendation

Maintain Current Language

ISSUE 4 Article 11 Personnel Files

Union's position

SEE UPS

Employer's position

SEE EPS

Discussion

The Supervisor's bargaining unit has agreed with the changes being sought by the Employer in this Article. The change in language to shorten the length of time for a discipline to remain active and apply it to all discipline makes sense on several levels. It is easier to administer, and understand, and it allows an employee to be able to be discipline free in less time, thereby accenting the corrective aspects of discipline. Unlike the Supervisory Unit, which contains relative few employees, the Deputy Unit is over six times larger. A change involving the length of active discipline on the record requires a clause that places all discipline in a consistent timeframe without creating a cumbersome system to track discipline that was issued prior to the date of this report. It requires some type of conversion provision that must establish a clean slate for written reprimands and warnings.

Recommendation

Section 11.1 All records of discipline shall cease to have force and effect **eighteen (18)** months from the date of issuance provided no intervening discipline has occurred. After elapsing, and upon the written **electronic mail notification** by the employee, such records shall be removed from the active personnel file and placed in a separate, inactive file, along with the request for removal. * Upon receipt of a public record request of an active personnel file, the Director of Administration for Personnel shall review the personnel file to ensure all inactive disciplinary records have been removed.

Disciplinary Conversion Provision

* All written warnings and reprimands issued prior to the date of this report shall cease to have any force and effect upon the date of this report and shall automatically be removed from the personnel files of all employees and placed in a separate inactive file. All other disciplinary actions involving suspensions issued prior to and after the date of this report shall be processed in accordance with the timelines contained in Section 11.1 above.

Sections 11.2-3 Current language

Sections 11.4 A. Current language

B. Employees will be notified by writing, via certified mail, to their home address, and if possible, by telephone call, that a request has been made to review their personnel file. This shall also include a request for copies of the employees' records through the use of a subpoena duces tecum.

Sections 11.4 C., D., and E. Current language

Sections 11.5 – 11.7 Current language

ISSUE 5 Article 12 Labor/Management Committee

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

This is a minor issue where both parties had very little disagreement. The Employer was simply attempting to eliminate language that designated certain months to hold quarterly meetings. I find no compelling reason to change current language based upon the arguments or evidence presented. The language already contains a provision that allows the parties to change the time of the labor/management meetings by mutual agreement.

Recommendation

Maintain Current Language

ISSUE 6 Article 17 Hours of Work and Overtime

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The evidence and testimony to change this article were insufficient to justify a change at this time. The comparable data presented by the Employer makes a compelling case to remain with what has worked in the past, current language. I do not find that the current system the Employer has for compensating overtime is inadequate or out of line with other comparable jurisdictions.

Recommendation

Maintain Current Language

ISSUE 7 Article 18 Wages and Compensation

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The Employer made a strong argument regarding the current state of County finances. The extent to which the County's financial troubles or difficulties have been exacerbated by the events of September 11th is unclear. A reasonable person must factor into an analysis such as this the sudden and pervasive effect that such an event had on a national and state economy. The financial condition of the Employer is a factor in this

matter that, according to statute, must and will be considered. However, that is not to say that a wage increases, and other economic improvements do not need to be made.

The Employer is not arguing inability to pay in this matter. However, it is arguing that income revenue and spending have been seriously impacted in the year 2001, and that the situation does not promise to change in the foreseeable future. On a national level experts disagree on the length of the recession, or whether we are still experiencing one. Whether such mediations shed light on local economies is much harder to forecast.

The recession, although labeled "mild" has strongly impacted manufacturing. Recently, manufacturing has had a great deal of excess capacity and is currently only at 73% total capacity. Unfortunately, a significant portion of the economy of northern Ohio is dependent upon manufacturing, particularly as it relates to the auto industry. One piece of good news is the surprising strength of auto sales in April of 2002 that ran contrary to what analysts predicted. However, it is also noted that Ford Motor Company has had to increase buying incentives in spite of this apparent trend reversal. It is also a fact that the job market for college graduates is extremely tight. The state of Ohio has recently been through two rounds of budget cuts, and the Republican controlled legislature is seriously considering increasing taxes in spite of their historic opposition to these types of remedies. If a recovery is in the offing, it does not appear to be evident in Ohio in any substantial way. At this point in time, it is difficult to predict the state's or the country's economic future.

According to the Department of Labor's most recent report (April 25, 2002), wages in the first quarter of 2002 have returned to the level where they were during the

first quarter of 1999. During the last two quarters (September 2001 to March 2002) wage increases for State and Local governments increased 0.6% and 0.7% respectfully. This represents a 1.3% increase in compensation for the past six (6) months. The most recent Consumer Price Index (CPI-U) for the Cleveland-Akron area, released from the U.S. DOL April 16, 2002, demonstrates that over the past twelve (12) months consumer prices were up 0.8 percent, well below the previous 12-month increase of 3.2%. While it is always a risk that inflation may increase at a more rapid rate, it has remained at or below 3%, largely due to Federal Reserve fiscal policy. Based upon this data, the Employer's wage offer appears to be reasonable and is not out of line with a trend in wage settlements that once again returned around the 3% range. The substantial increases in healthcare premiums have also contributed to keeping wages at a 3 % level.

I find the Employer's wage offer of 2% to fall short of comparable data. For example, wage increases in most of the bargaining units in Medina County are averaging 3%. Likewise, the Union's proposed wage increase of 5%, and 4.5% (2nd and 3rd year) exceeds what is the going rate of settlement in this "post 9-11" economy.

Recommendation

- 1. January 1, 2002: a 3% increase for all pay ranges**
- 2. January 1, 2003: a 3% increase for all pay ranges**
- 3. January 1, 2004: a 3% increase for all pay ranges**

ISSUE 8 Article 19 Court Time/Call In Pay

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The most relevant internal comparable regarding this issue is the amount of court time contained in the collective bargaining agreement with the Supervisor Unit. It remained at three (3) hours. However, call-in time was increased to four (4) hours. The Employer's proposal for maintaining court time at three (3) hours is also supported by external comparables located in counties contiguous to Summit County. I find that the bargaining unit benefit for court time is competitive at three (3) hours. However, I find that call in time under Section 19.2 should be equal to what the supervisors have in their agreement. The events of "9-11" have increased the possibility that call-ins may occur at any time.

Recommendation

Section 19.1 Current language

Section 19.2 Any employee called in to work at a time outside his scheduled shift, when call-in does not abut his scheduled shift, shall be credited with a minimum of **four (4) hours** worked.

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

Clearly this is one of the most difficult areas of bargaining. The main reason for this difficulty is the unpredictable experience and cost associated with health care coverage. Adequate health care coverage at a reasonable cost is becoming a rare commodity. Currently health care premiums are rising an average of thirteen percent (13%) per year ("Market Place," NPR broadcast, April 30, 2002). Parties to a collective bargaining agreement find themselves on the same side with regard to this issue. On the other side of the issue are those raising the cost of insurance coverage. Currently, prescription drug costs are particularly problematic.

The only reasonable approach is to make sure that every employee is covered by adequate insurance coverage. This will require greater shared costs on an incremental scale. In the meantime we can only hope that greater health care reform will take place that will address the relentless underlying inflationary costs of this benefit. The parties have already established the principle of sharing capped increases in health care costs,

which is consistent with comparable public employers in Ohio. The current cost to employees under the family plan is around \$29.00 per pay. It is capped at \$35.00.

As a matter of past bargaining history the parties agreed to raise the cap on employee contributions by \$2.00 per year. However, that relatively small cap on increases was bargained during a more favorable economic climate. In making changes it is not reasonable for an Employer to dramatically shift the potential economic burden of health care coverage by removing cost caps without buying this change in the form of some economic benefit the Union is seeking. Unfortunately, the current times do not provide the Employer with much flexibility in this area. The rapid rise in health care costs requires employees to take on a greater share of the costs, particularly in the area of drug costs. However, the Employer is not in a favorable position to demand more than employees can reasonably be prepared for in terms of increases. It is also noteworthy that in the history of bargaining the 10% employee share has never exceeded the cap.

Recommendation

ARTICLE 20

INSURANCES

Section 20.1. Current language.

Section 20.2. All employees who receive benefits will pay ten percent (10%) of the premium costs through payroll deductions. The costs for the self-insured plan will not exceed **forty-five dollars (\$45.00)** per pay in **2002**, and will not exceed **fifty-five dollars (\$55.00)** per pay in **2003**, and will not exceed **sixty-five dollars (\$65.00)** per pay in **2004**.

The employee prescription drug co-payment shall not exceed **ten dollar (\$10.00)** for a generic brand of medication and shall not exceed **twenty dollars (\$20.00)** for a non-generic brand of medication during the term of this agreement.

Section 20.3. Current language.

Section 20.4. Current language.

Section 20.5. Current language

Section 20.6. Current language

ISSUE 10 Article 22 Vacations

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

At the hearing the parties agreed to maintain current language.

Recommendation

Maintain current language.

ISSUE 11 Article 23 Sick Leave

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

At the hearing the parties agreed to maintain current language.

Recommendation

Maintain current language.

ISSUE 12 Article 24 Funeral Leave

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The department, county, and external comparative data demonstrate that the current list of relatives covered by the funeral leave provision and the number of days available represents a competitive benefit. The Union makes a compelling argument regarding the number of blended families in existence in our society. In contrast to the parents of "Baby Boomers" the divorce rate of Baby Boomers, is fifty percent (50%). Their offspring, "Generation X", who are members of the bargaining unit, have an increased chance of being from homes where there is a stepparent. The language already provides for legal guardians and other persons who stand in place of a parent. The addition of stepparent in the language makes sense in light of this existing language and the changing societal conditions.

Recommendation

Section 24.1 Bargaining unit employees shall be entitled to up to three (3) paid days funeral/bereavement leave to attend the funeral of any of the following individuals related to the individual: husband, wife, child(ren), mother, mother-in-law, father, father-in-law, sister, sister-in-law, brother, brother-in-law, daughter, daughter-in-law, son-in-law, grandchild(ren), grandparents, stepparent, legal guardian or other person who stands in place of a parent.

Employees attending the funeral of said named individuals, when the funeral is more than one hundred (100) miles from Summit County, shall be entitled to up to five (5) paid days of funeral leave.

ISSUE 13 Article 25 Injury Leave

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The Employer presented the same comparable data it used for all of the issues. This data reveals that many of these districts have injury leave, but define it as "service related" or connected. The Union argues workers compensation is in the best position to determine a work related injury from one that is not work related. It contends that if the Employer is in a position to make these judgments, it will in effect nullify this benefit. Section 25.1 of this Article begins with the phrase: *"In the event of an occupational injury incurred as a direct result of performing an assigned or sworn function within the scope of the employee's authority..."* It must be presumed that when the bargaining unit secured this benefit the parties were fully aware of the implications of this plain

language. If it were intended to cover only non-routine matters, it is reasonable to presume that the parties would have made this distinction. The language of Section 25.2, which ties this provision to Worker's Compensation, adds further credence to the Union's contention of the broader meaning of this provision.

The Employer contends it was supposed to apply to injuries that occurred "in the line of duty" such as the apprehension of a criminal or a physical altercation with a prisoner. What is not known is what the Union had to give up in order to secure this benefit when it was first established. The Employer, given its economic condition, is not in a position to buy back language if it feels it is too broad.

Recommendation

Maintain current language.

ISSUE 14 Article 26 Leaves of Absence

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The parties reached tentative agreement on this issue at the hearing

Recommendation

See Tentative Agreement section below.

ISSUE 15 Article 27 Uniforms and Equipment

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The Employer's opposition in this matter is based upon the totality of the economic demands of the Union. The facts clearly demonstrate that during the recent past, the parties have bargained a uniform increase of \$50 each year. The cost of inflation of items that wear out is usually what these minimal increases are intended to cover, and it is reasonable to assume that bargaining unit employees have grown accustomed to these incremental improvements. However, the current shortfall of revenue in the County must be factored into increases in this successor contract. It justifies a one-time departure of this pattern of increases for the first year of the Agreement.

Recommendation

ARTICLE 27

UNIFORMS AND EQUIPMENT

Section 27.1. Uniformed bargaining unit employees shall be entitled to the uniform allowance in the schedule listed below, pursuant to the Employer's rules, regulations and

procedures for the purpose of purchasing and maintaining uniforms and required leather equipment.

Uniform Allowance Schedule

2002 \$750.00
2003 \$800.00
2004 \$850.00

The uniform allowance is provided on a purchase requisition system and not on the basis of cash to the employee.

Plainclothes officers shall be eligible for uniform allowance according to the above schedule for use towards clothing determined by the Employer's rules, regulations and procedures. All requests for reimbursement by plainclothes employees must be accompanied by receipts. Uniformed officers shall be permitted to purchase civilian clothes (to be used in court). All requests for reimbursement by uniformed officers must be accompanied by receipts.

Section 27.2 to 27.5 Current Language.

ISSUE 16 Article 30 Severance Pay

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

According to the most recent history of bargaining, the amount of longevity paid out at retirement was improved substantially in the last contract. When viewing the comparable districts presented by the Employer it is apparent that the bargaining unit's current severance package favorably competes with the likes of Portage, Medina, Stark,

and Wayne counties. Cuyahoga does not even have a provision for severance pay. I do not find a compelling basis for making an improvement in the language at this time.

Recommendation

Maintain current language.

ISSUE 17 Article 33 Vacancies

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

This article has been the subject of numerous grievances and arbitration decisions. After examining Article 33 there it is apparent that it contains some confusing wording. However, that is not to say that it does not contain common elements used by employers as a basis for promotion. It is commonplace for seniority, skills, abilities, record of prior performance, and experience to appear in these types of articles. For example, in the OCSEA/AFSCME collective bargaining agreement covering some 40,000 state workers the parties have agreed that some jobs will be awarded by seniority, while others will be awarded by qualifications, experience, and education. Seniority is still considered, but only if two or more candidates are substantially equal in these qualifications.

It appears that much of the controversy regarding Article 33 arises over the application of its provisions. For example, the wording in Section 33.1 raises the following questions: How is job performance measured? When does disciplinary action matter? What does the phrase "additional skills and abilities" mean? What importance does physical fitness have and how is it relevant? Furthermore, what is the relative importance of all of these conditions? Are some consistently given greater weight? Obviously, some of the confusion would be eliminated with the existence of plainly worded job specifications, and relevant qualifications that are included with any job posting. This already may be the case, but because the parties had little opportunity to discuss this issue in negotiations this point was not made clear to the Fact-finder.

Because of the importance of this article to both parties, it is not wise to have yet another neutral Fact-finder impose language where the parties have not engaged in bargaining that has identified the most important areas that require improvement. The intimate knowledge the parties possess regarding the requirements of the numerous positions that exist in the bargaining unit is critical in negotiating changes that make "real" improvements. However, the current solution of continual grieving of this issue and getting differing opinions from arbitrators, partly due to different fact patterns, may be necessary in the interim but is not a permanent solution. It is recommended that the parties engage in mid-term bargaining over this issue in an attempt to at least clarify the meaning and application of the current language contained in Article 33. The Fact-finder, if requested by the parties, shall offer his services as a mediator/arbitrator to provide the parties with assistance if necessary.

Recommendation

Maintain current language*

It is recommended that for purposes of clarifying the meaning and application of Article 33 that the parties engage in mid-term bargaining that may lead to a memorandum of understanding. The Fact-finder, if requested, shall be available to assist the parties.

ISSUE 18 Article 34 Substance Abuse Screening

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

There were no changes made to Supervisor's collective bargaining agreement in this area. It is not reasonable to request that Deputies be held to a different standard than their supervisors. There was no substantial data presented that indicates the reasonable suspicion standard present in this provision is not working or is insufficient to provide a safe and secure working environment.

Recommendation

Maintain current language.

ISSUE 19 Article 35 Duration

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The past practice of the parties has been to have three-year agreements. There is no way of predicting whether the immediate revenue shortfalls the County is facing are a short lived or long-term problem. The length of the current recession, which many experts believe is about 12 months old, may last another year or may end as early as mid-2002. Experts differ on predictions in this area, but there are already some economic indicators that give some economists reason to be hopeful (e.g. new car sales). There is something to be said for the stability of a three-year agreement, and there is no demonstrable evidence that other like jurisdictions are shortening up the length of their agreements during this time. Furthermore, the history of bargaining between the parties and in Summit County has been to have three-year agreements.

Recommendation

ARTICLE 35

DURATION

Section 35.1. This agreement shall be effective as of **January 1, 2002** and shall remain in full force and effect until 11:59 p.m., **December 31, 2004.**

Section 35.2. If either party desires to modify or amend this agreement, it shall give written notice of such intent no earlier than ninety (90) calendar days prior to the expiration date, nor later than sixty (60) calendar days prior to the expiration date of this agreement. Such notice shall be by certified mail with return receipt requested. In the event that no notice is given by either party, this agreement shall be automatically renewed from year to year thereafter.

ISSUE 20 Article New Secondary Employment Rates

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

In order for the secondary employment rate proposal of the Union to receive a fair and objective evaluation, it is recommended that this issue be studied and evaluated over a period of time by a committee of employees and management representatives. The committee shall contain equal numbers of participants selected by both parities.

Recommendation

Secondary Rates Committee

Within ninety (90) days following the ratification of this CBA, the parties shall form a Secondary Rates Committee (SRC). The SRC shall be represented by an equal number of participants from the FOP and the administration. The SRC shall be responsible for recommending rates for secondary employment along with a policy to govern such rates of pay. The SRC shall make recommendations to the Sheriff and FOP President no later than May 1, 2003. If either party disagrees with the recommendations of the SRC, or there are no agreed upon recommendations from this committee the

work of the committee shall provide a basis for negotiations on this top for the next round of bargaining.

ISSUE 21 Article New Physical Abilities

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

This is an area of bargaining that is developing. It is clear that law enforcement work requires police officers to be physically fit and capable of performing a variety of tasks. Of course, like any work of this nature, the demands for physical strength and exertion vary day to day and from assignment to assignment. The television image of the tobacco chewing, pot-bellied sheriff may be amusing, but it is not the type of law enforcement officer that most communities, or most police officers find acceptable. It is also clear from the evidence that during the history of bargaining between the parties, the Employer has not proposed the establishment of physical fitness standards. According to the Union, during the last forty (40) years the Sheriff's Department has never raised the issue.

It is likely that many bargaining unit members are not only physically fit, but also endorse the need for fellow officers to be physically capable of performing their work in an acceptable manner. By its actions, the FOP has endorsed the value of fitness and strength training. It has provided the funding to furnish a very extensive workout facility

that is housed in the County Jail. This financial commitment is very significant and speaks volumes about the professionalism of the bargaining unit. However, the FOP raised many issues concerning the implementation of a fitness program. During the negotiations with the Supervisors unit there was very little discussion over this issue because of a focus on other issues. During the negotiations with the Deputies' unit, the parties had more dialogue over this issue. The Union argued several points regarding mutual involvement in program design; the FOP raised safety, job relatedness, job security, and financial incentives, just to name a few.

Any organization that has never formally emphasized an environment where a minimum level of fitness is expected must be cognizant of the fact that it will take time to make the transition. The length of time will depend on a variety of factors, not the least of which is leadership. The Ohio State Highway Patrol (OSHP) is a case of cultural change by example. The administrative officers in the Patrol set an example for the line officers. The cultural change that is being proposed by the Sheriff has considerable merit based upon the interest and welfare of the public.

Employees are likely to participate and support a program of this nature if the Union has a meaningful role in creating it. For example, the type and level of fitness training, strength versus cardiac conditioning, will need to be designed around the various types of jobs in the bargaining unit. Employees know what type of demands their jobs place on them. However, it is also a matter of fairness that employees be given sufficient lead-time and other types of encouragement prior to any mandatory demands. It is important for the administration to lead this effort by example; therefore their participation is critical in such a cultural change. They must "walk the talk." It is also

common for public employers, even ones who have hardly embraced such a program (e.g. OSHP), to include financial incentives in this type of program.

Recommendation

It is recommended no language be placed into the Agreement at this time, until the parties have sufficient opportunity to jointly design appropriate physical fitness standards. The parties used a similar approach in 1995, when they negotiated the then controversial topic of substance abuse testing. As they did with substance abuse testing, it is recommended that the parties make a firm commitment. However, a program of this magnitude represents a major cultural change. It is not the type of change that should be implemented without study, planning, and experimentation to determine the best approach for the Department. Therefore, it is recommended that the parties enter into a Letter of Intent and Understanding to develop a trial physical fitness program that includes testing.

The following is recommended:

Letter of Intent and Understanding Physical Fitness Trial Program

Section 1. The parties shall establish a committee for the purpose of developing and implementing a trial physical abilities testing program. The committee shall consist of no more than four (4) representatives from each party. The parties shall have the latitude to visit other employers and gather data on other successful programs. If practical and agreeable with both parties and both bargaining units, the committee may be combined with the committee established for the Supervisor's bargaining unit for purposes of efficiency.

Section 2. If the committee cannot agree on a physical abilities testing program within six (6) months of execution of this agreement, the Employer shall have the right to implement a trial job-related physical abilities testing program similar to the one adopted by the Florida Department of Law Enforcement and presented to the Association during the current contract negotiations. It is recognized that the Florida program may not be appropriate for the needs of the Summit County Sheriff's Department. However, this trial program shall be implemented in order for the parties to collect empirical data that will give them a fitness benchmark for all members of the Department and a basis to mutually design a workable program suited to the unique needs of the Sheriff's Department. The trial program shall be used for the duration of this Agreement.

Section 3. The parties agree that the program will initially be voluntary. However, all bargaining unit employees, except those specifically exempted by mutual agreement of the parties, shall be required to participate in a trial fitness test by October 15th of the final year of the labor agreement. The Employer agrees that it shall make reasonable precautions to ensure the safety and health of employees who participate in the program. No employee shall be subject to disciplinary action for not passing the trial test during the duration of this Agreement (2002-2004). All management employees in the Department are encouraged to lead by example and to take the trial test prior to October 15, 2004. Effective January 1, 2005 the program will become a mandatory program subject to the terms and conditions of the program negotiated by the parties during the next round of negotiations. The subject of financial incentives and how to address employees who fail to pass the test shall be included in these negotiations.

Section 4. The parties further agree that during the duration of this Agreement, the committee may, if it deems such to be appropriate, recommend changes to the Physical Abilities Testing Program. If such recommendations are agreeable to both the Union and the Employer, they will be reduced to writing and incorporated into this letter of intent and understanding.

ISSUE 22 Article New Work Rules Policies and Procedures

Union's position

SEE UPS.

Employer's position

SEE EPS

Discussion

The Employer is seeking to insert language into the CBA that it claims is needed because of a SERB ruling in the City of Toledo. The Union disagrees that it is necessary to include such language in the CBA. There is disagreement over the need for language regarding work rules, policies, and procedures and a lack of comparable data to demonstrate whether such an approach is accepted in other comparable jurisdictions.

Recommendation

No new language.

TENTATIVE AGREEMENTS

All other issues tentatively agreed to prior to the issuance of this Fact-finding Report are considered to be part of this report and are recommended to the parties.

The Fact-finder respectfully submits the above recommendations to the parties this 9th day of May, 2002 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read 'Robert G. Stein', written over a horizontal line.

Robert G. Stein, Fact-finder